Public Service Commission of Wisconsin

September 26, 1996

Mr. William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 — CC Docket No. 96-98

Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers — CC Docket No. 95-185

Dear Mr. Caton:

Enclosed for filing in the above-captioned docket, pursuant to 47 CFR § 1.429, are the original and eleven copies of the Petition for Reconsideration of the Public Service Commission of Wisconsin.

Sincerely,

Michael S. Varda

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Legal Counsel
Telecommunications Division

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Enclosure

cc: Cheryl L. Parrino, Chairman/PSCW
Scott Neitzel, Commissioner/PSCW
Daniel Eastman, Commissioner/PSCW
Scot Cullen, Administrator/PSCW

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	
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PETITION FOR RECONSIDERATION BY PUBLIC SERVICE COMMISSION OF WISCONSIN

Cheryl L. Parrino
Chairman

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PETITION FOR RECONSIDERATION
BY PUBLIC SERVICE COMMISSION OF WISCONSIN

The Public Service Commission of Wisconsin ("PSCW"), by its attorney, respectfully submits this Petition for Reconsideration ("Petition") of portions of the "First Report and Order" ("Order") in the above-captioned docket, released on August 8, 1996, and published in the Federal Register of August 29, 1996. This Petition is due on or before September 30, 1996, according to 47 CFR §§ 1.4(b) and 1.429.

I. The Requirement That All Interconnection Agreements Negotiated Prior to the 1996 Act be Submitted To State Commissions for Approval Should be Rescinded Because It is Contrary to the Statute and Administratively Burdensome. ¶ 165 and 47 CFR §51.303.

A. The best interpretation of § 252(a) does not compel a state approval process for all pre-Act interconnection agreements.

The PSCW seeks reconsideration of the requirement that all interconnection agreements among competitors within a local service territory, including those whose negotiations pre-dated February 8, 1996, be submitted for state commission approval pursuant to 47 U.S.C. §252(e). This request is motivated by the apparent reliance of the Federal Communications Commission ("FCC"), in part, upon the PSCW's first order regarding such "§ 252(a)(1) interconnection agreements" on May 17, 1996,[1] in which the PSCW adopted the view embraced in the FCC's First Report and Order at ¶ 165.

The PSCW, however, reversed its position, in a further letter order dated July 18, 1996 (copy attached). The PSCW re-interpreted the language of § 252(a)(1), and determined that pre-Act interconnection agreements need not be approved by PSCW, though a filing obligation was retained.

The language in 47 U.S.C. § 252(a)(1) critical to the PSCW's reconsideration is noted below:

> "Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of

[1] Order, supra, at ¶161 and Footnote 309.

> itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section."

Logically, the first sentence may be strictly construed to mean that approval was required only for those contracts whose negations and entry occurred after February 8, 1996. The third sentence's reference to "the agreement" of the first sentence, however, contains a modifying phrase that omits the "enter" requirement in respect to an agreement. The PSCW effectively determined that the purpose of the much-disputed phrase in the last sentence of § 252(1)(a) was to avoid excluding from the § 252 state commission approval process any interconnection agreement whose negotiations only -- not entry -- happened to precede the enactment of the 1996 Act on February 8, 1996. This did not change the requirement of the first sentence of § 251(a)(1) that "entry" into an interconnection agreement, following upon a "request for interconnection . . . pursuant to § 251," by definition, still had to occur on or after February 8, 1996. Given the early competitive interconnection arrangements (e.g. those in New York and Maryland) and proposed local competition trials pending at the time of enactment, this interpretation advances competition consistent with the primary objectives of the 1996 Act by "capturing" for the new approval process those critical early agreements whose negotiations only could not satisfy the literal wording of the first sentence.

This interpretation better makes for a more certain and functional construction of the language at issue. The Order itself, at ¶ 170, questions the functional

relevancy of pre-Act interconnection agreements, noting that "preexisting agreements were negotiated under very different circumstances, and may not provide a reasonable basis for interconnection agreements under the 1996 Act." Surely, if Congress had really intended for all old interconnection agreements to be approved by the states -- for whatever policy gain it perceived -- it would have stated such a policy directly.

The PSCW urges the FCC to reconsider its Order. The interpretation adopted by the PSCW on reconsideration harmonizes the three sentences of § 251(a)(1), assures an interpretation that does not leave contracts out of the approval process that should logically be included, and avoids straining to derive a major policy directive from a simple modifying phrase located in the third sentence of § 251(a)(1).

B. A correct interpretation avoids an immense administrative burden.

The PSCW has estimated that in excess of 3,000 different agreements covering various facets of incumbent local exchange carrier ("ILEC") interconnection would have to be approved. Wisconsin has over 80 telephone companies. The approval requirement, in hindsight, is an unnecessary administrative burden, especially if the agreements are potentially "obsolete." Moreover, many small telecommunications utilities ("small telcos") would be obliged to secure approval when no competitor may be interested in their service areas or the small telcos may be planning to secure rural telephone company exemptions under § 251(f), thereby mooting the approval process. The PSCW still believes pre-Act interconnection agreements are useful to the

development of competitive markets, but their value to new entrants is more as background information, not as agreements for the new competitive period.

C. The FCC should order that an ILEC has a duty to supply pre-Act interconnection agreements as a matter of good faith negotiation and that a state commission may elect to require public filing of pre-Act agreements or summaries without formal approval under § 252(e).

While the PSCW supports the FCC's information availability objectives, the PSCW suggests two changes that would facilitate the transfer of needed information about pre-Act agreements to those telecommunications carriers that want it. The first change is to bar an ILEC from denying copies of pre-Act interconnection agreements in the same manner cost data may not be denied to a requesting carrier in negotiations. Order, at ¶ 155. Technical interconnection information could be as useful as the provision of cost studies that the FCC considers critical to good faith negotiation. Cost studies might be indecipherable without relevant explanatory technical design information.

The second change would allow a state commission the option to "check" any obstructive ILEC behavior by ordering pre-Act agreements (or summaries) to be publicly filed at the state commission. The PSCW has some recent experience that supports this approach as efficient and practical. The PSCW's original May 17 order required, in its first round, filing of EAS and Extended Community Calling ("ECC") interconnection agreements relevant to Wisconsin's defined local exchange territories. These pre-Act agreements were filed on July 1, before the July 18 reconsideration

order that removed the requirement for approval and set up a filing-only process that permitted the use of summaries of agreements. Since July 1, requesting carriers have used the public information about the EAS and ECC agreements without any complaint, formal or informal, that the PSCW should proceed with § 252(e) approvals of these agreements.

In light of the foregoing, the PSCW suggests that the FCC create a new 47 CFR § 51.301(c)(8)(ii) and re-designate the present (ii) as (iii):

> ". . . (ii) refusal by an incumbent LEC to furnish copies its existing interconnection agreements for local exchange service (telephone exchange service and/or exchange access) that a requesting telecommunications carrier reasonably requires to identify the network elements that it needs or desires in order to serve a particular customer; and . . . ."

The PSCW also suggests that 47 CFR § 51.303(a) be modified by the addition of the following sentence:

> "In lieu of approving agreements as provided in this paragraph, a state commission may elect to establish a filing process that by way of copies, summaries, or a combination of the foregoing, makes available for public inspection interconnection agreements negotiated before February 8, 1996."

II. The FCC Should Permit a State to Seek a Waiver of the Requirement of at Least Three Cost-Related Rate Zones for Geographic Deaveraged Rates. ¶ 765 and 47 CFR §51.507(f).

The PSCW agrees with the FCC that deaveraging of rates is appropriate for interconnection and unbundled network elements. The PSCW, however, respectfully requests that the FCC establish more flexibility for the states in what could be a difficult process.

The PSCW strongly urges the FCC to make available a waiver process to permit states sufficient flexibility to review their individual situations and, if appropriate, adopt different processes or perhaps fewer than three zones with respect to rates for interconnection and unbundled network elements.

There are too many "unknown unknowns" at this time to be certain what factors are relevant to the deaveraged rates. The Order itself lacks any discussion of what those relevant factors may be. Order, supra, ¶¶ 764-765. At this time, the requirement of at least three zones may be a too-early elevation of form over substance.

In its own situation, Wisconsin faces the consideration of factors such as the treatment of utilities under state-wide price caps for residential and small business customers,[2] the number of small telcos that may retain rural telephone company exemption, possible distinctions between "urban costs" and "rural costs," universal service costs, dynamic effects of zones on costs and rates, implications of § 259 infrastructure sharing on costs, and terrain differences that affect costs,[3] to name just

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[2] Both Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), as of September 1, 1994, and GTE North Incorporated, as of January 1, 1995, elected price regulation under 1993 Wis. Act 496. These elections effectively prevent rate increases for at least three years from the date of election for the companies' residential (R-1) and small business (B-1 with 3 lines or fewer) customers.

[3] In a recent 1994 case, necessary rock blasting for one small telco's plant upgrades contributed significantly to a near tripling of the authorized "just and reasonable" rate. The increases were phased in over two years and universal service funding was required. Notification by Forestville Telephone Company, Inc., That It Intends to Increase Telephone Rates, PSCW docket 2050-TR-101 (January 5, 1994).

a few potential factors. As rates are involved, the issues will be intensely debated and compromises may be essential.

The PSCW submits that additional flexibility is needed to foster the principle of deaveraging of interconnection and unbundled network elements, and proposes addition of the following provision to 47 CFR § 51.507(f):

> "(3) A state commission may petition for a waiver of this section to implement a state-specific alternative deaveraged rate structure plan to reflect geographic cost differences. The Commission may grant the waiver if it finds that the proposed plan is consistent with the purposes of this section and the public interest."

Wherefore, the Public Service Commission of Wisconsin respectfully requests that the Federal Communications Commission reconsider the Order's holdings cited above and change its regulations as recommended.

Dated this 26th day of September, 1996.

Respectfully submitted,

Michael S. Varda
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Telecommunications Division

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Public Service Commission of Wisconsin

To: All Local Exchange Carriers

Re: Investigation of the Implementation of the Telecommunications Act of 1996 in Wisconsin 05-TI-140

At its open meeting of July 11, 1996, the Commission reopened the record in this docket and, upon further reconsideration, rescinded its May 17, 1996 letter order that required Wisconsin Bell, Inc. ("Ameritech"), GTE North Incorporated ("GTE") and all Wisconsin independent companies (ICOs) to file with the Commission and obtain approval of all agreements with other providers covering telecommunications services.

After reviewing the record in this docket, the Commission determined that the language in 47 U.S.C. § 252(a)(1) to require the approval of "any interconnection agreement negotiated before the date of enactment" had a more limited purpose. The Commission found that a more reasonable interpretation of this statutory provision is that the phrase is intended to make subject to approval interconnection agreements whose execution occurred after February 8, 1996, but whose negotiations may have occurred prior to that date. The Commission, therefore, rescinds its May 17, 1996 letter order requiring the approval of all telecommunications agreements with other providers covering telecommunications services. The extended area service (EAS), cellular and direct interconnection agreements already filed in compliance with the letter order shall not be approved by the Commission but will be placed on file.

The Commission did find, however, that it is necessary to require incumbent local exchange carriers (ILECs) to file certain agreements, in addition to the EAS, direct interconnection and cellular agreements, for the Commission to use in evaluating 47 U.S.C. § 251-type agreements regarding the merits of any claim by an ILEC that it could not provide a form of interconnection to a new entrant. The Commission is requesting the filing of the pre-Act agreements pursuant to its statutory powers in s. 196.25, Stats. The Commission, however, determined that filing of toll service agreements was unnecessary, considering that 47 U.S.C. § 251-type interconnection agreements deal with the local exchange market. The Commission further clarified that infrastructure sharing agreements under 47 U.S.C. § 259, are not subject to filing for approval as interconnection agreements under 47 U.S.C. § 252.

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The Commission, therefore, is requiring Ameritech, GTE and the ICOs to file EAS, extended community calling (ECC), cellular, direct interconnection, 911, directory assistance, directory listings, operator services, and signalling system 7 pre-Act agreements that exist with other telecommunications providers (see the attached list of definitions for these services). However, such contracts and agreements which had expired and had not been renewed and agreements which had been completely terminated and/or renegotiated prior to February 8, 1996, (the date on which the Act became effective) need not be filed. Likewise, contracts which have expired between February 8, 1996, and the date of this order, and have not been renewed or renegotiated, also need not be filed. To facilitate the referencing of these agreements, a summary will be required for each type of interconnection agreement currently in effect. The summary shall identify the other party, the date of agreement, the service(s) exchanged and the billing method (offsets, cash, bill-and-keep), but not specifying actual compensation levels if determined in the contract. The summary listing for each type of interconnection agreement should be filed nonconfidentially to permit new entrants a legitimate opportunity to know of, and review, agreements relevant to their opportunities to negotiate interconnection agreements.

Agreements and summaries should be filed with the Commission according to the following schedule. Five copies are required of the agreement, cover letters and supporting summary. Only one copy of a confidential agreement need to be filed. The agreements should be addressed to **Lynda L. Dorr**, Secretary to the Commission, Public Service Commission of Wisconsin, P.O. Box 7854, Madison, Wisconsin 53707-7854.

All agreements should be filed as joint filings, with both providers filing cover letters. The joint filings will prevent duplicate filings and problems due to an agreement being filed simultaneously as both confidential and nonconfidential. The providers should also jointly agree on whether the agreement will be filed under confidential cover. If the agreement is to be confidential, it must be accompanied by the appropriate form. Only one copy of a confidential agreement needs to be filed.

Companies need only file those agreements that have not already been filed. For example, Ameritech and GTE have already filed all EAS agreements between them and the independent companies. The ICOs are to file all their remaining EAS agreements by November 1, 1996. At that time, the ICOs will not need to refile those agreements which were filed by Ameritech and GTE on July 1, 1996.

Where companies have a number of agreements that have the same rates, terms and/or conditions, the company should file five copies of a sample of the agreement or identical language, together with a list of all identical agreements or agreements using that language. If the terms and conditions of the agreements are the same, but the rates differ, the company can file a sample of the terms and conditions, together with copies of just the pages from each agreement showing the differing rates.

Schedule

Agreements between telecommunications providers and supporting summaries must be filed according to the following schedule.

By August 1, 1996
Ameritech and GTE File: SS7 agreements and supporting summary.
ICOs File: None.

By August 19, 1996
Ameritech and GTE File: Summary of all pre-Act direct interconnection. cellular and EAS agreements that were filed on July 1, 1996.
ICOs File: None.

By September 3, 1996
Ameritech and GTE File: 911, DA, OS and directory listing agreements, and supporting summaries.
ICOs File: None.

By October 1, 1996
Ameritech and GTE File: ECC agreements and supporting summary.
ICOs File: ECC agreements and supporting summary.

By November 1, 1996
Ameritech and GTE File: None.
ICOs File: Direct interconnection and EAS agreements, and supporting summaries.

By December 2, 1996
Ameritech and GTE File: None.
ICOs File: SS7 agreements and supporting summary.

By January 2, 1997
Ameritech and GTE File: None.
ICOs File: 911, DA, OS and directory listing agreements, and supporting summaries.

This letter order is issued under the Commission's jurisdiction in ss. 196.02, 196.19, 196.194(1), 196.196, 196.20, 196.219, 196.25, 196.28, 196.37, 196.39, 196.395, 196.40, Stats., other provisions of chs. 196 and 227, Stats., as may be pertinent hereto, and the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252, as applied by the Commission under its discretion and jurisdiction in ch. 196, Stats.

If you should have any questions on this. please contact Timothy W. Ulrich. Policy Analyst, of the Telecommunications Division staff at (608) 261-9419.

By the Commission.

Signed this 18th day of July, 1996

Lynda L. Dorr
Secretary to the Commission

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cc: Service List 05-TI-140
Records Management, PSCW

See attached Notice of Appeal Rights.

DEFINITIONS OF AGREEMENTS

For the purposes of this letter order, the various agreements between telecommunications providers that must be filed are divided into the following categories:

Direct Interconnection: This category includes agreements for the termination of local calls originated on one provider's network and terminated on that of the other provider that are not included in the EAS or Extended Community Calling (ECC) categories.

EAS: EAS agreements are for the transport and termination of extended area service calls.

ECC: ECC agreements are for the transport and termination of extended community calling calls.

911: This category covers contracts for 911 service between telecommunications providers, plus agreements over the routing of emergency calls and compensation for such emergency calls and associated networks.

DA: This category covers agreements and contracts for directory assistance.

Directory Listings: This category covers agreements for the sharing, sale, or use of directory listings, and for distribution of directories.

OS: This category covers agreements and contracts involving operator services (except for directory assistance). This also includes agreements for providing Traffic Service Position system (TSPS) service to Customer-Owned Coin-Operated Telephones (COCOTs).

SS7: This category includes agreements for providing Signalling System 7 services through the tandem or another remote office, for interconnection to signal transfer points (STPs) and other SS7 equipment and databases, and also includes agreements for 800 number translation and WATS serving offices.

Cellular: This category covers agreements with cellular, paging or RCC providers.

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in s. 227.53, Stats. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in s. 227.01(3), Stats., a person aggrieved by the order has the further right to file one petition for rehearing as provided in s. 227.49, Stats. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with s. 227.48(2), Stats., and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 4/22/91